

RESPONSE TO CONSULTATION ON THE PUBLIC INQUIRY INTO HISTORICAL CHILD ABUSE IN SCOTLAND (AND OTHER SCOTTISH GOVERNMENT COMMITMENTS TO SURVIVORS OF HISTORICAL CHILD ABUSE)

March 2015

CEL CIS is the Centre for Excellence for Looked after Children in Scotland, based at the University of Strathclyde. We welcome this opportunity to respond to this consultation on the Public Inquiry into Historical Child Abuse in Scotland, and other Scottish Government commitments to survivors of historical child abuse.

1. What should this Inquiry seek to do?

The consultation outlined six potential outcomes of the Inquiry. These were:

- Hear the experiences of individuals who have been subject to abuse in institutional or other care settings
- Hear the perspectives of state and non-state providers of residential or other care on meeting their past duty of care
- Create a national public record of historical child abuse in institutional or other care settings
- Raise public awareness and understanding about abuse and its impact
- Provide an opportunity for public acknowledgement and validation of the experiences of those who have been abused
- Identify how much risks have been reduced by recent changes to policy, practice and legislation, and decide what further changes are needed to improve safeguards for children in institutional or other care settings.

CELCIS agrees that these are valid and important outcomes for the Public Inquiry. It is crucial to listen to the experiences of survivors of historical abuse of children in care, and to validate their experiences. It is also important to gain the perspectives of providers and care services and other relevant organisations in order to address how and why abuse happened, and how allegations of abuse were addressed (or not addressed). It is important that this is not done in an adversarial way and that the focus of the Inquiry is establishing the facts. This will enable the creation of a national public record, increasing public awareness and public acknowledgement of the experiences of survivors of abuse. Establishing the facts may also identify new situations of abuse and in order for justice to be served, the Inquiry must pass on such evidence to the police in order to be addressed by the justice system. The Inquiry must offer justice and accountability to survivors.

The Inquiry should consider the nature and extent of historical child abuse and consider its long-term consequences for survivors and their families. It should address the current needs of survivors and their families.

The Inquiry should also look at the legislative and regulatory framework for child care settings over time, consider the changes that have been made to protect children, and make recommendations which will ensure that Scotland's care system is fit for the purpose of caring for vulnerable children and young people.

Finally the Inquiry must be taken forward in a way that respects the human rights of all, seeks to address these sensitive issues in a dignified and respectful way, and is seen as part of a reconciliation process.

2. Setting the Terms of Reference for the Inquiry

Time frame upper limit

The consultation also asked whether there should be an 'upper limit' to the time frame of the Inquiry, and it asked whether the dates of particular legislation should be used as the upper limit, for example, 1995 or 2002.

CELCIS considers that choosing a single date based on legislation is problematic. It considers that while taking account of the potential to conflict with current investigations of allegations of abuse, the Chair of the Inquiry should have the discretion to include cases of abuse up until the announcement of the Inquiry.

Time frame lower limit

The consultation asked whether the earliest consideration of historical abuse should be ‘within living memory’.

CELCIS agrees that this is an appropriate time frame.

Types of abuse

The consultation question states that the ‘starting point is that the Inquiry should cover all forms of abuse - physical, sexual and emotional as well as neglect’.

CELCIS agrees that the Inquiry should consider all types of abuse, and in addition to physical, sexual and emotional abuse, and neglect, it should also consider other forms of abuse which have been highlighted in the abuse of children in care. These include spiritual abuse due to the impact of abuse in religious care settings, inappropriate physical restraint, and medical experimentation. The Inquiry should also address the broader impacts of systemic abuse which result in poor outcomes for children in care, and this should include the working of child migrant schemes.

3. Nature of abuse

The consultation asked about the nature of abuse, that is, circumstances where the culture of an organisation or care setting condoned or failed to act to deal with abuse, and whether the Inquiry should include ‘acts of omission’.

CELCIS agrees that these are important features of abuse in care and should be considered by the Inquiry. Previous inquiries and reviews have highlighted how organisational culture can contribute to the abuse of vulnerable children and

young people in care. Acts of omission also need to be addressed, and these should include the way in which allegations of abuse have been dealt with. There should also be exploration of organisational, systemic issues, for example, inadequate staffing levels.

4. Types of care settings

The consultation question asked whether the Inquiry should focus on the principle that it should include settings where the 'state' has had a role and specific duty in acting to safeguard children and where it would have had a role if using current definitions of a 'looked after child'.

CELCIS considers that settings which have provided for the care of children and young people should be included. This should include the full range of residential care settings across public, third sector and private sectors. This will include evacuation centres, hospitals, and school boarding hostels. It should also cover local authority, third sector and private foster care.

5. Time frame for reporting

The consultation asked when it would be reasonable to expect the Inquiry to be able to report once it had been set up. It is clear that the time frame for reporting will be affected by the remit and scope of the Inquiry. However, CELCIS considers that the Inquiry should report within five years.

There should be regular interim reporting from the Inquiry, at the end of key tranches of work, in order that the agenda remains firmly in the spotlight and to ensure the Inquiry is being held to account for the delivery of its findings in a timely manner.

6. Definition of a child

Acknowledging that the definition of a child has changed over time, the consultation asked whether, for the purposes of the Inquiry, a 'child' should be defined as any aged 18 years or under at the time of the abuse.

CELCIS agrees with this.

7. Where the abuse happened

The consultation stated that the scope of the Inquiry will be limited to either where the abuse took place in Scotland or where those who had the responsibility for making the arrangements for safeguarding children were located in Scotland. Where there is evidence of abuse that took place elsewhere in the UK it would be a matter for equivalent Inquires in England and Wales, and Northern Ireland, or for the police in those jurisdictions in the case of evidence of criminal activity emerging.

CELCIS considers that this is appropriate as it will include children abused in other countries, including migrant children, but placed by Scottish organisations and authorities.

8. What should we look for in a Chair and Panel?

The consultation asked for views on the attributes of the Chair of the Inquiry and the Panel. It suggested a number of important attributes and these were:

- Able to build and maintain the confidence of survivors, relevant organisations, the general public and Ministers throughout the Inquiry process
- Commanding the respect of participants

- Treating all participants with dignity and respect, particularly where sensitive information is concerned
- Providing clear leadership, being decisive and prepared to challenge others where appropriate and necessary
- Drawing out evidence and managing the process so as to respect everyone's right to natural justice and human rights
- Able to analyse evidence and reach conclusions to help in making clear recommendations
- Knowledge of human rights
- Knowledge of child care institutions and their operation in Scotland
- Understanding of legislation, policy and practice and its impact on child care in Scotland.

CELCIS fully endorses these suggestions. It is absolutely critical that the Chair and the Panel must be independent and have a demonstrated ability, skill and willingness to productively challenge those in authority, including the state. They must be able to relate to, understand and engage with survivors throughout the work of the Inquiry, and this will require an awareness of the difficult experiences they have had with government, authority and the judiciary. They must have a clear understanding of the experiences of children in care, and the changing environment of care settings over time. They must also have knowledge and understanding of the long-term consequences of trauma and abuse for survivors and their families. The Chair and the Panel must also be able to listen and engage with the whole range of stakeholders involved in historical abuse of children in care.

They must have a keen understanding and appreciation of human rights and how these will apply in the context of historical abuse in care.

The Chair and the Panel will need to be able to analyse and forensically examine written records and testimony, draw clear conclusions and write analytical reports with robust outcome-focused recommendations.

9. Other considerations

Commemoration

It is clear that there are different views about the role of commemoration for the historical abuse of children in care. Some survivors feel that this is an important part of a process of acknowledgement, others do not want a reminder of their past experiences.

It is therefore crucial that ongoing work on commemoration is survivor-led and that their wishes are pre-eminent.

CELCIS would offer support in taking this work forward in any way that may be most suitable, whether this is physical commemoration, an event, or another form of commemoration.

Survivor Support Fund

The consultation asked what the key purpose of a Survivor Support Fund should be, what additional services it should seek to provide, and who should administer such a fund. The InterAction Action Plan on Justice for Victims of Historic Abuse of Children in Care addressed reparation for survivors in terms of restitution, rehabilitation and compensation.

CELCIS considers that an individual, needs-led approach to the Survivor Support Fund must be taken in order to provide for the diverse and multiple needs of survivors and their families. This needs-led approach must be accessible as and when survivors require assistance. Survivors and their families will need different types of help at different stages of their lives, as they respond to the long-term

consequences of trauma. There are clear needs for advocacy, counselling services and psychiatric and mental health services. Services to address the physical health needs of survivors are also important. Support in terms of education and training, job seeking and career advice is important.

The Survivor Support Fund needs to address the issue of compensation for abuse in care. CELCIS appreciates that while some survivors do not wish financial recompense, others consider this an essential part of reparation, acknowledgement and accountability. This matter should be considered further with care, sensitivity and with the involvement of survivors.

The time bar

The consultation asks how the impacts of the Time Bar on survivors might be best addressed.

CELCIS understands this is a highly complex issue, and views that as a starting point the judiciary should have due awareness of the many credible developmental, social and psychological reasons for survivors' delays in bringing forward historical child abuse cases. In doing so, the judiciary should follow clear principles when considering how and when to lift the time bar, and in cases of in-care historical child abuse, the onus should be on judges to explain why they apply the time bar, rather than why they are lifting it.

Ultimately, CELCIS would recommend that the time bar is lifted for all cases of in-care historical child abuse. It would be essential that the parameters are tightly defined, including the threshold and nature of the abusive conduct to be included in this exception. The location included in this exception should be abuse which occurred within Scotland.

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